In the High Court of Judicature at Madras

Dated: 10/08/2004

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The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Ms.Justice S.SARDAR ZACKRIA HUSSAIN

Habeas Corpus Petition No. 422 of 2004

Mansoor Ali ..Petitioner

-vs-

1. The Government of Tamil Nadu,
rep.by its Secretary to Government,
Prohibition and Excise Dept.,
Fort St.George,
Chennai-9.

2. The District Magistrate and District
Collector of Cuddalore District
at Cuddalore. ..Respondents

Habeas Corpus Petition under Article 226 of the Constitution of India filed to issue a Writ of Habeas Corpus, calling for the entire records leading to the detention of the petitioner namely, Mansoor Ali, son of Jahangeer Basha under Act 14/1982 vide Detention Order dated 16 .10.2003 made in Memo No.C4/62533 of 2003, on the file of the 2nd respondent, quash the same and consequently direct the respondents to produce the body and person of the detenu before this court and thereafter set him at liberty from the central Prison, Cuddalore.

!For Petitioner : Mr.V.Parthiban for
Mr.K.Elangovan

^For Respondents : Mr.Abudu Kumar Rajarathinam,
Govt.Advocate (Criminal Side)

:ORDER
(Order of the Court was made by P.SATHASIVAM, J.,)

The detenu himself challenges the detention order dated 16.10.2003, detaining him as goonda under the Tamil Nadu Act 14 of 1982. The ground case relates to an occurrence that had taken place on 20.09.2003 for the offences under sections 341 and 302 IPC. The detenu has one adverse case to his credit for the offences under sections 506(ii) and 302 read with 34 IPC.

2. Learned counsel appearing for the petitioner after taking us through the grounds of detention, would contend that inasmuch as the detaining authority has referred in para 6 of the grounds of detention that he considered the ground case and "past cases" and taken the decision to detain the detenu under Preventive Act, whereas the detenu had only one adverse case. The detaining authority has not applied its mind before passing the order of detention. He also submitted that since the only one adverse case related to an occurrence on 31.03.2002 and the ground case, according to the prosecution, had taken place on 20.09.2003, there is no proximity with reference to the adverse case. Accordingly, the respondents are not justified in passing the order of detention.

3. We dispose of both the contentions in the following manner. It is true that the grounds of detention refers only one adverse case, that was on 31.03.2002, which had taken place in Bhuvanagiri Fish Market within the jurisdiction of Bhuvanagiri Police Station. The detenu was charged for the offences under sections 506(ii) and 302 read with 34 IPC.

4. Though in para 6 of the detention order, the detaining authority had stated that he perused and considered "past cases", it refers only one adverse case, that took place on 31.03.2002 and the ground case on 20.09.2003. Inasmuch as the detaining authority has referred to all the details and even relating to the adverse case that had taken place on 31.03.2002, in the earlier paragraph, we are of the view that merely because there is a reference "past cases", it cannot be presumed that the detaining authority has not applied its mind properly.

5. Coming to the next contention, namely, proximity, it is true that the adverse case related to the occurrence on 31.03.2002 and the ground case, on which the detention order was passed, taken place on 20 .09.2003. In this regard, the learned Government Advocate appearing for the respondents has brought to our notice the details regarding the occurrence that had taken place on 31.03.2002 and the subsequent event on 20.09.2003. In the first case, it is the claim of the prosecution that the petitioner/detenu being hireling, brutally murdered the younger brother of Masilamani, namely, Thangamani on 31.03.2002 at Keel Bhuvanagiri, that too, in Fish Market. It is also brought to our notice that the second incident though it had taken place quite after sometime, namely, 20.09.2003, the very same person, who is a hireling, murdered the brother of the said Thangamani, viz., Kaliamoorthy when he was proceeding to the market in a bicycle along with other persons.

6. In this regard, the learned Government Advocate very much relied on the decision of the Division Bench of this Court reported in Subbiah.. vs.. The Commissioner of Police, Madras City (1993 L.W.(Crl.) 1 13. While considering the proximity to the earlier occurrence, Their Lordships after referring the definition to Section 2(e) of the COFEPOSA Act, have observed as follows:-

"The definition of 'goonda' refers to the habitual commission or attempt to commit or abatement of the commission of offences specified in the section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or abets commission of offences. Hence, it is not necessary further for the authority to wait for his committing another act which is likely to cause prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also as to whether such acts will cause prejudice to the maintenance of public order. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case it will not be preventive detention but a case of detention after the commission of the offence. Hence a reading of S.3(1) together with S.2(a) and (f) of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goona within the meaning of S..2(f) they can themselves be taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order.

7. In para 32 of the order, they further held that
"if the materials before the authority prove that the person concerned had habitually committed offences or attempted to commit the same or abetted commission of the same that would be sufficient to show that he is a goonda and the fact that cases were not actually registered against him would not in any way be material".

8. Considering the materials placed before the detaining authority in the case on hand, we are in respectful agreement with the said conclusion. It is also relevant to note that in para 31, Their Lordships have held, after referring the judgment of the Supreme court in Raj Kumar Singh ..vs.. State of Bihar (AIR 1986 SC 2173), that even a lapse of one year between the two offences would not negative the proximity of the offences by a habitual offender.

9. In the light of the above discussion and in view of the materials placed before the detaining authority, we are unable to accept the arguments of the learned counsel for the petitioner. Consequently, the habeas corpus petition fails and the same is dismissed.

Index: Yes.
Internet: Yes.

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To

1. The Secretary to Government,

Prohibition and Excise Dept.,
Fort St.George,
Chennai-9.

2. The District Magistrate and District
Collector of Cuddalore District
at Cuddalore.

3. The Public Prosecutor,
High Court, Madras.